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JPMORGAN CHASE BANK, N.A.

13 JPMorgan Chase Bank, N.A.,
14 Plaintiff,
15 v.
16 Focus South Group, LLC and John A. Ritter
17 Defendants.

Case Nos.:

Case No. 2:09-cv-01550
Case No. 2:09-cv-01549
Case No. 2:09-cv-01548
Case No. 2:09-cv-01551
Case No. 2:09-cv-01552
Case No. 2:08-cv-01709
Case No. 2:08-cv-01711
Case No. 2:08-cv-01713
Case No. 2:08-cv-01716
Case No. 2:08-cv-01715

STIPULATION OF DISMISSAL WITHOUT PREJUDICE

22 This Stipulation (the “Stipulation”) is entered as of December 9, 2011 by and between
23 Plaintiff JPMorgan Chase Bank, N.A. in its capacity as Administrative Agent (“JPMorgan”) on
24 the one hand and the following parties (the “Dismissed Defendants”) on the other:

- Defendants John A. Ritter and Focus South Group, LLC (the “Focus Parties”)
- Defendants KB Home and KB Home Nevada Inc.
- Defendants Toll Brothers Inc. and Coleman-Toll Limited Partnership
- Defendants Weyerhaeuser Real Estate Company and Pardee Homes of Nevada
- Defendants Beazer Homes USA, Inc. and Beazer Homes Holding Corp.

Recitals

1. WHEREAS on December 5, 2008, JPMorgan (in its capacity as Administrative Agent, on behalf of the Lenders) commenced the “Completion Guaranty Cases” in the Southern District of New York. The Completion Guaranty Cases were ultimately transferred to the United States District Court for the District of Nevada. The Completion Guaranty Cases filed against the Dismissed Defendants are captioned¹:

- *JPMorgan Chase Bank, N.A. v. Focus South Group, LLC and John A. Ritter*, Case No. 2:09-cv-01550
- *JPMorgan Chase Bank, N.A. v. KB Home and KB Home Nevada Inc.*, Case No. 2:09-cv-01549
- *JPMorgan Chase Bank, N.A. v. Coleman-Toll Limited Partnership and Toll Brothers, Inc.*, Case No. 2:09-cv-01548
- *JPMorgan Chase Bank, N.A. v. Weyerhaeuser Real Estate Company and Pardee Homes of Nevada*, Case No. 2:09-cv-01551
- *JPMorgan Chase Bank, N.A. v. Beazer Homes USA, Inc. and Beazer Homes Holdings Corp.*, Case No. 2:09-cv-01552

2. WHEREAS on December 5, 2008, JPMorgan (in its capacity as Administrative Agent, on behalf of the Lenders) also commenced the “UCC Cases” in the United States District Court for the District of Nevada (the “UCC Cases”). The UCC Cases filed against the Dismissed Defendants are captioned²:

- *JPMorgan Chase Bank, N.A. v. Focus South Group, LLC and John A. Ritter*, Case No. 2:08-cv-01709
- *JPMorgan Chase Bank, N.A. v. KB Home and KB Home Nevada Inc.*, Case No. 2:08-cv-01711
- *JPMorgan Chase Bank, N.A. v. Coleman-Toll Limited Partnership and Toll Brothers, Inc.*, Case No. 2:08-cv-01713
- *JPMorgan Chase Bank, N.A. v. Weyerhaeuser Real Estate Company and Pardee Homes of Nevada*, Case No. 2:08-cv-01716
- *JPMorgan Chase Bank, N.A. v. Beazer Homes USA, Inc. and Beazer Homes Holdings*

¹ JPMorgan also filed a Completion Guaranty case against Meritage Homes Corp. and Meritage Homes of Nevada, Inc. (“Meritage”) (*JPMorgan Chase Bank, N.A. v. Meritage Homes Corp. and Meritage Homes of Nevada, Inc.*, Case No. 2:09-cv-01547). Subject to the Meritage defendants’ consent, JPMorgan proposes to dismiss the case against the Meritage defendants without prejudice.

² JPMorgan also filed a UCC case against Meritage (*JPMorgan Chase Bank, N.A. v. Meritage Homes Corp. and Meritage Homes of Nevada, Inc.*, Case No. 2:08-cv-01717). Subject to the Meritage defendants' consent, JPMorgan proposes to dismiss the UCC Case against the Meritage defendants without prejudice.

1 *Corp.*, Case No. 2:08-cv-01715

2 3. WHEREAS the Completion Guaranty Cases and the UCC Cases were subsequently
 3 consolidated for discovery purposes, in a base case entitled *JPMorgan Chase Bank, N.A. v KB*
 4 *Home, et al.*, Case No. 2:08-cv-01711-PMP-RJJ (United States District Court for the District of
 5 Nevada).

6 4. WHEREAS on December 9, 2010, JPMorgan (in its individual capacity as Lender),
 7 Credit Agricole Corporate and Investment Bank and Wells Fargo Bank, N.A. (collectively, the
 8 “Petitioning Creditors”) filed an involuntary petition under chapter 11 of the United States
 9 Bankruptcy Code against South Edge, LLC (“South Edge”), commencing a case entitled *In re:*
 10 *South Edge, LLC*, United States Bankruptcy Court for the District of Nevada, Case No. 10-32968-
 11 BAM (the “South Edge Bankruptcy Case”), and JPMorgan, in its capacities as Administrative
 12 Agent and a creditor, sought the appointment of an interim and permanent chapter 11 trustee.

13 5. WHEREAS on February 3, 2011, the Bankruptcy Court in the South Edge
 14 Bankruptcy Case entered an order for relief on the Petitioning Creditors’ involuntary petition, as
 15 well as an order directing the appointment of a chapter 11 trustee.

16 6. WHEREAS JPMorgan in its capacity as Administrative Agent, together with the
 17 Settling Builders,³ proposed and filed in the South Edge Bankruptcy Case the Joint Plan of
 18 Reorganization Proposed by JPMorgan Chase Bank, N.A., as Administrative Agent Under the
 19 Prepetition Credit Agreement, and the Settling Builders (Amended as of October 21, 2011), ECF
 20 No. 1309 (the “Plan”), which Plan was confirmed by order of the Bankruptcy Court dated
 21 October 27, 2011, ECF No. 1335]. The Plan provides for, among other things, a settlement
 22 among the Agent and the Settling Builders, and the assignment of South Edge’s real estate and
 23 certain other assets to the Acquirer, all as defined and provided in the Plan. On November 18,
 24 2011, the Plan became effective. Pursuant to the Plan, the Settling Builders paid in full the
 25 amounts sought by JPMorgan pursuant to the repayment guarantees provided by the Settling

26 27 ³ The Settling Builders are all of the Dismissed Defendants with the exception of the Focus Parties and Alameda
 Investments, LLC.

Builders (which repayment guarantees had been triggered as a result of the entry of the order for relief in the South Edge Bankruptcy Case). In total, the Settling Builders funded more than \$330 million in repayment guarantee and other amounts pursuant to the Plan.

4 7. WHEREAS the Settling Builders, the Focus Parties, and JPMorgan (solely in its
5 capacity as Administrative Agent) are parties to the Settlement and Mutual Release dated as of
6 October 17, 2011 (the “Settlement Agreement”), under which the parties thereto resolved, among
7 other things, all claims and potential claims between the Focus Parties, on the one hand, and the
8 Settling Builders, (to the extent practicable and permissible under the Credit Agreement) the
9 Administrative Agent, and the Trustee (on behalf of South Edge and its bankruptcy estate), on the
10 other hand. Pursuant to the Settlement Agreement, the Focus Parties and various of their
11 affiliates received \$40.4 million, including \$35.4 million paid by the Settling Builders.

12 8. WHEREAS, among other parties, the Settling Builders, JPMorgan (solely in its
13 capacity as Administrative Agent), Inspirada Builders, LLC, South Edge (by Inspirada Builders
14 LLC) and the Alameda Liquidating Trust, as successor-in-interest to Alameda Investments, LLC,
15 are parties to the Settlement Agreement and Mutual Release of Claims dated as of November 8,
16 2011 (the “Alameda Settlement Agreement”), under which the parties thereto granted the mutual
17 releases provided for therein and agreed to consolidate and allow a single, \$56 million claim
18 against the Alameda Liquidating Trust in favor of South Edge.

Stipulation

20 IT IS HEREBY STIPULATED AND AGREED, by and between the undersigned
21 attorneys for JPMorgan and the Dismissed Defendants, as follows:

22 1. In accordance with the Plan, the Settlement Agreement and the Alameda Settlement
23 Agreement, the UCC Cases and Completion Guaranty Cases filed against the Dismissed
24 Defendants should be dismissed, in each case without prejudice, and without costs to any party.

25 2. This stipulation may be approved by the Court on an *ex parte* basis under Federal
26 Rule of Civil Procedure 41(a)(2).

1 Dated: December 9, 2011
2

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23 Counsel for Defendants KB Home and
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25 Counsel Defendants Coleman-Toll Limited
26 Partnership and Toll Brothers, Inc.

27 IT IS SO ORDERED

28 

PHILIP M. PRO
UNITED STATES DISTRICT JUDGE

Dated: December 12, 2011.